

FILED
MARCH 6, 2008
 MICHAEL W. DOBBINS
 CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

08 C 1351

MATTHEW T. CARLEY and)
 KIMBERLY ANN CARLEY,)
)
 Plaintiffs,)
) No.
 v.)
)
 USAA CASUALTY INSURANCE)
 COMPANY,)
)
 Defendant.)

JUDGE NORDBERG
MAGISTRATE JUDGE BROWN

COMPLAINT

Plaintiffs, Matthew T. Carley and Kimberly Ann Carley, by their attorneys, Edward Eshoo, Jr. and Christina M. Phillips of Childress Duffy Goldblatt, Ltd., for their Complaint against Defendant, USAA Casualty Insurance Company, state as follows:

FACTS

1. Plaintiffs, Matthew T. Carley and Kimberly Ann Carley, are citizens of the State of North Carolina. Defendant, USAA Casualty Insurance Company (“USAA”), is a corporation organized under Texas law, with a principal place of business at 9800 Fredricksburg Road, San Antonio, Texas 78288 and is engaged in the business of underwriting and issuing homeowners insurance policies. This Court has subject matter jurisdiction over this matter pursuant to Title 28, U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount exceeds \$75,000.

2. USAA issued a policy of insurance to the Plaintiffs for the period May 25, 2006 to May 25, 2007 (hereinafter referred to as the “insurance policy”). A copy of the Declarations is

attached to this Complaint as Exhibit A. Plaintiffs are not in possession of a complete copy of the insurance policy.)

3. Under the insurance policy, USAA insured Plaintiffs against sudden and accidental direct physical loss or damage to the real property located at 8679 North 3000 East Road in Ellsworth, Illinois (hereinafter referred to as “the insured premises”) and to their personal property, including loss or damage caused by fire.

4. On March 7, 2007, while the insurance policy was in full force and effect, the insured premises was damaged by fire.

5. Plaintiffs duly submitted a claim to USAA under the insurance policy for their losses and damages caused by the fire.

6. As a result, it was and is USAA’s contractual obligation to pay Plaintiffs for all of their losses and damages they sustained as a result of the March 7, 2007 fire.

7. Although requested to do so, USAA has failed, refused, and continues to fail and refuse to pay Plaintiffs for all of their losses and damages, in breach of the express terms of the insurance contract and in breach of the implied contractual term of good faith and fair dealing.

8. This breach of the insurance contract was and is the direct and proximate cause of damage to Plaintiffs in an amount in excess of \$75,000.

COUNT II

1-8. Plaintiffs realleges paragraphs 1 through 8 of the Fact of the Complaint as paragraphs 1 through 8 of Count II of the Complaint.

9. Plaintiffs are entitled to an award of taxable costs, including attorney fees, under section 155 of the Illinois Insurance Code by virtue of USAA engaging in the following vexatious and unreasonable conduct:

- (a) failing to pay for all of Plaintiffs' losses and damages based on an unreasonable and erroneous interpretation of its own insurance policy provisions;
- (b) failing to conduct a full, fair, and impartial investigation of Plaintiffs' claim;
- (c) failing to pay Plaintiffs all of the amounts due under the insurance policy within 40 days of the loss, which constitutes an unreasonable delay in paying Plaintiffs' claim as a matter of law;
- (d) not attempting in good faith to effectuate a prompt, fair, and equitable settlement of all of Plaintiffs' claim, a claim in which liability was reasonably clear; and
- (e) forcing Plaintiffs to retain legal counsel to investigate their claim and to file this lawsuit to recover the benefits that should have been immediately forthcoming under the insurance policy.

WHEREFORE, Plaintiffs, Matthew T. Carley and Kimberly Ann Carley, respectfully pray for an award of taxable costs under section 155 of the Illinois Insurance Code, including reasonable attorney fees, in their favor and against Defendant, USAA Casualty Insurance Company.

/s/ Edward Eshoo, Jr.
One of the Attorneys for Plaintiffs

Edward Eshoo, Jr.
Christina M. Phillips
Childress Duffy Goldblatt, Ltd
515 North State Street, Suite 2200
Chicago, Illinois 60610
(312) 494-0200